

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANGELA HARRISON, Individually, and  
DESIREE WELCH, Individually,

Plaintiffs,

v.

TOYS “R” US-DELAWARE, INC., doing  
business in Washington State “TOYS “R”  
US,” and PAULA “DOE,” Individually and  
“JOHN DOE,” Individually, and the Marital  
Community Comprised Thereof,

Defendants.

Case No. C06-5583 RBL

ORDER

INTRODUCTION

This matter comes before the Court on plaintiffs Angela Harrison and Desiree Welch’s motion to remand, arguing that the Court lacks subject matter jurisdiction because while the parties are diverse, the amount in controversy does not meet the required \$75,000. For the following reasons, plaintiffs’ motion to remand is GRANTED.

## BACKGROUND

Plaintiffs Angela Harrison and Desiree Welch were employees of Toys “R” Us in Washington. They allege that they were sexually harassed, and were subjected to a hostile work environment after they complained of the harassment.

Plaintiffs originally brought this action in Pierce County Superior Court, and defendants removed it to the Western District of Washington. Plaintiffs now move to remand back to Pierce County Superior Court.

## DISCUSSION

### **1. Remand to Pierce County Superior Court is Proper**

Any civil action brought in state court is removable if it might have been brought originally in federal court. 28 U.S.C. § 1441(a). 28 U.S.C. § 1332(a)(1) provides, in relevant part, “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States.” If the court determines that it is without subject matter jurisdiction at any time before the final judgment, the action shall be remanded to the state court. 28 U.S.C. § 1447(c).

There is a strong presumption against removal jurisdiction, and federal jurisdiction “must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The defendant always bears the burden of establishing the propriety of removal. *Id.* Where the amount of damages sought by a plaintiff is unclear, defendant must prove facts supporting the jurisdictional amount by a preponderance of the evidence. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403 (9th Cir. 1996); *Gaus*, 980 F.2d at 567; 28 U.S.C. § 1332(a). Thus, the defendant must demonstrate that it is “more likely than not” that the amount in controversy exceeds \$75,000. *Sanchez*, 102 F.3d at 404.

1 The Court determines whether the defendant has met this burden by first considering whether it is  
2 “facially apparent” from the complaint that the jurisdictional amount is satisfied. *See Singer v. State Farm*  
3 *Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th Cir. 1997). If the complaint does not clearly specify damages,  
4 the Court may examine facts in the complaint and evidence submitted by the parties. *See id.*

5  
6 First, there remains a question of whether complete diversity exists. However, since defendants  
7 Paula “Doe” and “John Doe” are being sued under the fictitious name “Doe,” as plaintiffs have not yet  
8 ascertained their true names, their citizenship as it pertains to diversity is disregarded. 28 U.S.C. §  
9 1441(a).

10  
11 The second, dispositive question is whether the amount in controversy in this case exceeds  
12 \$75,000. The plaintiffs argue that the compensatory damages they are seeking are approximately \$2,000,  
13 and that any non-economic damages are uncertain and at the jury’s discretion. The defendants argue that  
14 each plaintiff’s economic damages award would be approximately \$9,000. The defendants further argue  
15 that when attorney’s fees and noneconomic damages are uncertain, the Court should look to trends in  
16 analogous cases, pointing to two cases - *Parker-Jones v. Eagle Hardware & Garden, Inc.*, 94 Wn. App.  
17 1053 (1999), which awarded \$200,000 in noneconomic damages, and *Forbes v. ABM Indus.*, 127 Wn.  
18 App. 1003 (2005), which awarded approximately \$1.6 million in noneconomic damages. *See Simmons v.*  
19 *PCR Tech.*, 209 F. Supp. 2d 1029, 1033-34 (N.D. Cal. 2002).

20  
21 The Court does not find the defendants’ arguments persuasive. Even if the Court were to examine  
22 outside cases in attempting to determine whether, if all of the plaintiffs’ claims were proved, the amount  
23 awarded would satisfy the jurisdictional minimum, *Parker-Jones* and *Forbes* do not demonstrate a trend in  
24 analogous cases. While the defendants have demonstrated that jury verdicts *may* be substantial, they have  
25 not demonstrated that in this case, a jury verdict *would* be substantial by a preponderance of the evidence.  
26  
27 *See Sanchez*, 102 F.3d at 403.

1 Because it appears that the court lacks subject matter jurisdiction, as the amount in controversy  
2 does not exceed \$75,000 and the plaintiffs have brought no federal question action, plaintiffs' motion to  
3 remand is GRANTED.  
4

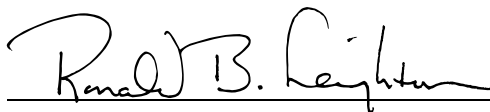
5 **2. Attorney's Fees Are Not Warranted**

6 Under 28 U.S.C. § 1447(c) the decision to award attorney's fees if a motion to remand is granted is  
7 at the Court's discretion. The Court must determine whether the Defendant had objectively reasonable  
8 grounds to believe that removal was proper. The Court has considered the defendants' arguments, and has  
9 determined that such objectively reasonable grounds were present, and an award of attorney's fees is not  
10 warranted. Therefore, plaintiffs' motion for attorney's fees is DENIED.  
11

12 **CONCLUSION**

13 Plaintiffs' motion to remand to Pierce County Superior Court is GRANTED. Plaintiffs' motion for  
14 attorney's fees is DENIED.  
15

16 Dated this 13<sup>th</sup> day of December, 2006.  
17

18  
19 

20 RONALD B. LEIGHTON  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26  
27  
28